

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 10/764,231

Confirmation No. 8493

Inventors: Gerald T. GOURDIN, et al.

Title: COMPOSITIONS ENRICHED
IN PHENOLIC COMPOUNDS
AND METHODS FOR
PRODUCING THE SAME

Filed: January 23, 2004

TC/A.U. 1625

Examiner: Taylor V. OH

Docket No. PHEN234 CIP2

Customer No. 25235

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE
AND TRANSMITTAL OF ISSUE AND PUBLICATION FEES

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to M.P.E.P. § 1302.14 Reasons for Allowance, in the Notice of Allowability mailed September 5, 2007, the Examiner stated reasons why the 35 U.S.C. § 112, 2nd paragraph rejection of claim 30 and the nonstatutory obviousness-type double patenting rejection of claims 1-2, 4-19, 23-25 and 30-33 had been withdrawn. However, the Notice of Allowability was silent regarding withdrawal of the 35 U.S.C. § 102(b) rejections of claim 23-25 over U.S. Patent Nos. 5,814,494, 5,773,262 and 5,484,594.

As noted at M.P.E.P. § 1302.14(l), providing reasons for allowance is not mandatory. Indeed,

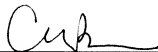
... where the examiner's actions and the applicant's reply explicitly present reasons why claims are patentable over the reference, the reasons for allowance are in all probability evident from the record and **no** statement should be necessary.

Such is the case with respect to withdrawal of the 35 U.S.C. § 102(b) rejections of claim 23-25 in the present case over U.S. Patent Nos. 5,814,494, 5,773,262 and 5,484,594. Each of U.S. Patent Nos. 5,814,494, 5,773,262 and 5,484,594 fails to teach or suggest the "decreased levels of anthocyanins as compared to levels of anthocyanins in the original plant material" as recited in independent claim 23 and incorporated in claims 24 and 25 through dependency. Accordingly, claims 23-25 are neither anticipated nor rendered obvious by U.S. Patent Nos. 5,814,494, 5,773,262 and 5,484,594.

The claims being in form for allowance, attached Part B—Fee Transmittal authorizes the small entity Issue and Publication Fees and any fee deficiencies associated with this filing to be charged to Deposit Account 50-1123.

Respectfully submitted,

September 11, 2007



Carol W. Burton, Reg. No. 35,465
Hogan & Hartson L.L.P.
1200 17th Street, Suite 1500
Denver, CO 80202
Telephone: (303) 454-2454
Facsimile: (303) 899-7333